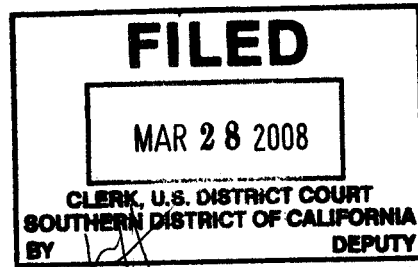


DAVID M.C. PETERSON  
 California State Bar Number pending  
 FEDERAL DEFENDERS OF SAN DIEGO, INC.  
 225 Broadway, Suite 900  
 San Diego, CA 92101-5008  
 Telephone: (619) 234-8467  
 Email: David\_Peterson@fd.org  
 \_\_\_ Retained X Appointed

**ORIGINAL**



IN THE UNITED STATES DISTRICT COURT  
 SOUTHERN DISTRICT OF CALIFORNIA

TRIAL JUDGE Honorable Larry A. Burns.

Court Reporter Eva Oemick

UNITED STATES OF AMERICA,

)

Case No. 08CR0416-LAB

)

Plaintiff-Appellee,

)

**NOTICE OF APPEAL (Criminal)**

)

v.

)

FRANCISCO ESPARZA-GUTIERREZ,

)

Defendant-Appellant.

)

)

Notice is hereby given that Francisco Esparza-Gutierrez, Appellant-Defendant above-named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the

(X) final judgment (F. R. Crim. P. 32(b))

( ) sentence only (18 U.S.C. § 3742) Sentence imposed \_\_\_\_\_.

( ) order (describe): \_\_\_\_\_.

the last of which was entered in this proceeding on the 24<sup>th</sup> day of March, 2008

If government appeal: Was the filing of this appeal approved in accordance with 18 U.S.C. § 3742(b)(4)?  
 \_\_\_ Yes \_\_\_ No

DATED: March 25, 2008

DAVID M.C. PETERSON, Attorney for Defendant

Transcripts Required\*\* X Yes \_\_\_ No Date Ordered or to be ordered 4/15/08

Date (X) Indictment ( ) Information Filed 2/19/08

Bail Status in custody

Will there be a request to expedite the appeal and set a schedule faster than that normally set? \_\_\_ Yes \_\_\_ No (Note: This does not alleviate requirement of FRAP 27-12 a motion to expedite which must be done in accordance with FRAP 27).

\*Pursuant to Fed. R. Crim. P. 32(a)(2) the defendant may request the clerk to prepare and file the Notice of Appeal.

\*\*If transcript required, transcript order form (CA9-036 must be completed and court reporter contacted to make arrangements for transcription.

AO 245B (Rev. 9/00) Judgment in a Criminal Case  
Sheet 1

FILED

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

2008 MAR 28 AM 10:01

CLERK US DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA

v.

FRANCISCO ESPARZA-GUTIERREZ (1)

JUDGMENT IN A CRIMINAL CASE

(For Offenses Committed On or After November 1, 1987)

Case Number: 08CR0416-LAB

DAVID PETERSON, FEDERAL DEFENDERS, INC

Defendant's Attorney

REGISTRATION NO. 06543298

☐

THE DEFENDANT:

☒

pleaded guilty to count(s)

ONE OF THE INFORMATION

☐

was found guilty on count(s)

after a plea of not guilty.

Accordingly, the defendant is adjudged guilty of such count(s), which involve the following offense(s):

Title & Section

Nature of Offense

Count  
Number(s)

8 USC 1326(a)

DEPORTED ALIEN FOUND IN THE UNITED STATES (Felony)

1

The defendant is sentenced as provided in pages 2 through 4 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐

The defendant has been found not guilty on count(s)

☐

Count(s)

is ☐ are ☐ dismissed on the motion of the United States.

☒

Assessment: \$100.00 remitted

☒

Fine waived

☐

Property forfeited pursuant to order filed \_\_\_\_\_, included herein.

IT IS ORDERED that the defendant shall notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant shall notify the court and United States Attorney of any material change in the defendant's economic circumstances.

MARCH 24, 2008

Date of Imposition of Sentence

*Larry A. Burns*

HON. LARRY ALAN BURNS

UNITED STATES DISTRICT JUDGE

Entered Date:

3/28/2008  
08CR0416-LAB

AO 245B (Rev. 9/00) Judgment in Criminal Case  
Sheet 2 — Imprisonment

Judgment — Page 2 of 4

DEFENDANT: FRANCISCO ESPARZA-GUTIERREZ (I)  
CASE NUMBER: 08CR0416-LAB

### IMPRISONMENT

The defendant is hereby committed to the custody of the United States Bureau of Prisons to be imprisoned for a term of  
NINE (9) MONTHS continuous custody, pursuant to 18 USC 3563(b)(10)

☐ The court makes the following recommendations to the Bureau of Prisons:

☐ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at \_\_\_\_\_ ☐ a.m. ☐ p.m. on \_\_\_\_\_  
as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before \_\_\_\_\_  
☐ as notified by the United States Marshal.  
☐ as notified by the Probation or Pretrial Services Office.

### RETURN

I have executed this judgment as follows:

Defendant delivered on \_\_\_\_\_ to \_\_\_\_\_  
at \_\_\_\_\_, with a certified copy of this judgment.

UNITED STATES MARSHAL

By \_\_\_\_\_  
DEPUTY UNITED STATES MARSHAL

08CR0416-LAB

DEFENDANT: FRANCISCO ESPARZA-GUTIERREZ (1)  
CASE NUMBER: 08CR0416-LAB

### PROBATION

Upon release from imprisonment, the defendant shall be on probation for a term of:  
**FIVE (5) YEARS**

### MANDATORY CONDITIONS

The defendant shall report to the probation office in the district to which the defendant is released within 72 hours of release from the custody of the Bureau of Prisons.  
The defendant shall not commit another federal, state or local crime.

The defendant shall not illegally possess a controlled substance.

The defendant shall cooperate as directed in the collection of a DNA sample, pursuant to 18 USC 3583(d).

*For offenses committed on or after September 13, 1994:*

The defendant shall refrain from any unlawful use of a controlled substance. The defendant shall submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter. Testing requirements will not exceed submission of more than \_\_\_\_\_ drug tests per month during the term of supervision, unless otherwise ordered by court.

☐ The above drug testing condition is suspended, based on the court's determination that the defendant poses a low risk of future substance abuse.

The defendant shall not possess a firearm, destructive device, or any other dangerous weapon.

If this judgment imposes a fine or a restitution obligation, it shall be a condition of supervised release that the defendant pay any such fine or restitution that remains unpaid at the commencement of the term of supervised release in accordance with the Schedule of Payments set forth in this judgment.

The defendant shall comply with the standard conditions that have been adopted by this court. The defendant shall also comply with any special conditions imposed.

### STANDARD CONDITIONS OF SUPERVISION

- 1) the defendant shall not leave the judicial district without the permission of the court or probation officer;
- 2) the defendant shall report to the probation officer and shall submit a truthful and complete written report within the first five days of each month;
- 3) the defendant shall answer truthfully all inquiries by the probation officer and follow the instructions of the probation officer;
- 4) the defendant shall support his or her dependents and meet other family responsibilities;
- 5) the defendant shall work regularly at a lawful occupation, unless excused by the probation officer for schooling, training, or other acceptable reasons;
- 6) the defendant shall notify the probation officer at least ten days prior to any change in residence or employment;
- 7) the defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician;
- 8) the defendant shall not frequent places where controlled substances are illegally sold, used, distributed, or administered;
- 9) the defendant shall not associate with any persons engaged in criminal activity and shall not associate with any person convicted of a felony, unless granted permission to do so by the probation officer;
- 10) the defendant shall permit a probation officer to visit him or her at any time at home or elsewhere and shall permit confiscation of any contraband observed in plain view of the probation officer;
- 11) the defendant shall notify the probation officer within seventy-two hours of being arrested or questioned by a law enforcement officer;
- 12) the defendant shall not enter into any agreement to act as an informer or a special agent of a law enforcement agency without the permission of the court;
- 13) as directed by the probation officer, the defendant shall notify third parties of risks that may be occasioned by the defendant's criminal record or personal history or characteristics and shall permit the probation officer to make such notifications and to confirm the defendant's compliance with such notification requirement.

08CR0416-LAB

AO 245B (Rev. 9/00) Judgment in a Criminal Case  
Sheet 4 — Continued 2 — Probation

Judgment—Page 4 of 4

DEFENDANT: FRANCISCO ESPARZA-GUTIERREZ (I)  
CASE NUMBER: 08CR0416-LAB

### SPECIAL CONDITIONS OF SUPERVISION

- ☒ Nine months continuous custody, pursuant to 18 USC 3563(b)(10)
- ☐ Submit to a search of person, property, residence, abode or vehicle, at a reasonable time and in a reasonable manner, by the probation officer.
- ☒ The defendant shall violate no laws, federal, state and local, minor traffic excepted.
- ☐ If deported, excluded, or allowed to voluntarily return to country of origin, not reenter the United States illegally and report to the probation officer within 24 hours of any reentry to the United States; supervision waived upon deportation, exclusion, or voluntary departure.
- ☐ Not transport, harbor, or assist undocumented aliens.
- ☐ Not associate with undocumented aliens or alien smugglers.
- ☒ Not reenter the United States illegally.
- ☐ Not enter the Republic of Mexico without written permission of the Court or probation officer.
- ☐ Report all vehicles owned or operated, or in which you have an interest, to the probation officer.
- ☐ Not possess any narcotic drug or controlled substance without a lawful medical prescription.
- ☐ Not associate with known users of, smugglers of, or dealers in narcotics, controlled substances, or dangerous drugs in any form.
- ☐ Participate in a program of mental health treatment as directed by the probation officer, take all medications as prescribed by a psychiatrist/physician, and not discontinue any medication without permission. The Court authorizes the release of the presentence report and available psychological evaluations to the mental health provider, as approved by the probation officer. The defendant may be required to contribute to the costs of services rendered in an amount to be determined by the probation officer, based on the defendant's ability to pay.
- ☐ Take no medication containing a controlled substance without valid medical prescription, and provide proof of prescription to the probation officer, if directed.
- ☐ Participate in a mental health treatment program as directed by the probation office.
- ☐ Provide complete disclosure of personal and business financial records to the probation officer as requested.
- ☐ Be prohibited from opening checking accounts or incurring new credit charges or opening additional lines of credit without approval of the probation officer.
- ☐ Seek and maintain full time employment and/or schooling or a combination of both.
- ☐ Resolve all outstanding warrants within \_\_\_\_\_ days.
- ☐ Complete \_\_\_\_\_ hours of community service in a program approved by the probation officer within \_\_\_\_\_
- ☐ Reside in a Community Corrections Center (RRC) as directed by the probation officer for a period of \_\_\_\_\_
- ☐ Reside in a Community Corrections Center (RRC) as directed by the Bureau of Prisons for a period of \_\_\_\_\_ commencing upon release from imprisonment.
- ☐ Remain in your place of residence for a period of \_\_\_\_\_, except while working at verifiable employment, attending religious services or undergoing medical treatment.
- ☐ Not engage in any form of telemarketing, as defined in 18 USC 2325, without the written permission of the probation officer.
- ☐ Comply with the conditions of the Home Confinement Program for a period of \_\_\_\_\_ months and remain at your residence except for activities or employment as approved by the court or probation officer. Wear an electronic monitoring device and follow procedures specified by the probation officer. Pay the total cost of electronic monitoring services, or a portion if deemed appropriate by the probation officer.
- ☐ Participate in a program of drug or alcohol abuse treatment, including urinalysis testing and counseling, as directed by the probation officer. The defendant may be required to contribute to the costs of services rendered in an amount to be determined by the probation officer, based on the defendant's ability to pay.

08CR0416-LAB

MIME-Version:1.0  
From:efile\_information@casd.uscourts.gov  
To:casd.uscourts.gov  
Bcc:Efile.dkt.gc2@usdoj.gov, david\_peterson@fd.org,  
sylvia\_enrique@fd.org, roseanna\_stovall@casd.uscourts.gov,  
efile\_Burns@casd.uscourts.gov  
Message-Id:<2497310@casd.uscourts.gov>  
Subject:Activity in Case 3:08-cr-00416-LAB USA v. Esparza-Gutierrez  
Plea Entered  
Content-Type: text/html

**\*\*\*NOTE TO PUBLIC ACCESS USERS\*\*\* You may view the filed documents once without charge. To avoid later charges, download a copy of each document during this first viewing.**

**U.S. District Court**

**Southern District of California**

**Notice of Electronic Filing**

The following transaction was entered on 3/25/2008 at 2:22 PM PDT and filed on 3/24/2008

**Case Name:** USA v. Esparza-Gutierrez

**Case Number:** 3:08-cr-416

**Filer:**

**Document Number:** 16(No document attached)

**Docket Text:**

Minute Entry for proceedings held before Judge Larry Alan Burns: Court accepts the plea taken before the Magistrate Judge as to defendant Francisco Esparza-Gutierrez (1). Sentencing held on 3/24/2008 for Francisco Esparza-Gutierrez (1). Count(s) 1, Bureau of Prisons 9 months continuous custody pursuant to 18 USC 3563 (b)(10)), probation 5 years, no fine, assessment \$100.00 remitted. (Court Reporter EVA OEMICK).(Plaintiff Attorney Caleb Mason s/a for Mark Conover - n/a).(Defendant Attorney David Peterson, FD). (tlw)

**3:08-cr-416-1 Notice has been electronically mailed to:**

U S Attorney CR Efile.dkt.gc2@usdoj.gov

David M.C. Peterson david\_peterson@fd.org, sylvia\_enrique@fd.org

**3:08-cr-416-1 Notice has been delivered by other means to:**

MIME-Version:1.0  
From:efile\_information@casd.uscourts.gov  
To:casd.uscourts.gov  
Bcc:cassd\_ecf@fd.org, Efile.dkt.gc2@usdoj.gov,  
efile\_Adler@casd.uscourts.gov  
Message-Id:<2376976@casd.uscourts.gov>  
Subject:Activity in Case 3:08-mj-00169-JMA USA v. Esparza-Gutierrez  
Initial Appearance  
Content-Type: text/html

**\*\*\*NOTE TO PUBLIC ACCESS USERS\*\*\* You may view the filed documents once without charge. To avoid later charges, download a copy of each document during this first viewing.**

**U.S. District Court**

**Southern District of California**

**Notice of Electronic Filing**

The following transaction was entered on 1/23/2008 at 9:02 AM PST and filed on 1/22/2008

**Case Name:** USA v. Esparza-Gutierrez

**Case Number:** 3:08-mj-169

**Filer:**

**Document Number:** 2(No document attached)

**Docket Text:**

Minute Entry for proceedings held before Judge Jan M. Adler : Initial Appearance on complaint as to Francisco Esparza-Gutierrez held on 1/22/2008. Federal Defenders appointed for Francisco Esparza-Gutierrez. Bond set as to Francisco Esparza-Gutierrez (1) \$20,000 C/CS; 18:3142(d) hold until 2/5/08. Preliminary Hearing set for 2/5/2008 02:00 PM in Courtroom D before Magistrate Judge Jan M. Adler. (Tape #15:37-16:20). (Plaintiff Attorney James Melendres, AUSA).(Defendant Attorney Victor Pippins, FD-S/A). (jjh)

**3:08-mj-169-1 Notice has been electronically mailed to:**

Federal Defenders cassd\_ecf@fd.org

U S Attorney CR Efile.dkt.gc2@usdoj.gov

**3:08-mj-169-1 Notice has been delivered by other means to:**



1 **DAVID M.C. PETERSON**  
California Bar No. Pending  
2 **FEDERAL DEFENDERS OF SAN DIEGO, INC.**  
225 Broadway, Suite 900  
3 San Diego, California 92101-5008  
Telephone: (619) 234-8467  
4 Facsimile: (619) 687-2666  
Email: David\_Peterson@fd.org  
5

6 Attorneys for Defendant Esparza-Gutierrez  
7

8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
10 **(HONORABLE JAN M. ADLER)**

11 UNITED STATES OF AMERICA,	)	CASE NO. 08MJ0169
	)	
12 Plaintiff,	)	
	)	
13 v.	)	<b>NOTICE OF APPEARANCE</b>
	)	
14 FRANCISCO ESPARZA-GUTIERREZ,	)	
	)	
15 Defendant.	)	

---

16  
17 Pursuant to implementation of the CM/EMF procedures in the Southern District of  
18 California, David M.C. Peterson, Federal Defenders of San Diego, Inc., files this Notice of Appearance as  
19 lead attorney in the above-captioned case.

20 Respectfully submitted,

21  
22 Dated: January 29, 2008

/s/ DAVID M. C. PETERSON  
DAVID M.C. PETERSON  
Federal Defenders of San Diego, Inc.  
Attorneys for Defendant  
David\_Peterson@fd.org



## Notice of Appeal Notification Form

**To:** Clerk, U.S. Court of Appeals  
**From:** U.S. District Court, Southern District of California  
**Subject:** New Appeals Case Information & Docket Fee Notification

**Date:** 04/1/08

### Case Information

Case Title: United States of America v. Francisco Esparza-Gutierrez  
 U.S.D.C. No.: 08cr416 LAB U.S.D.C. Judge: Larry Alan Burns  
 Complaint/Indictment/Petition Filed: Information  
 Appealed Order Entered: 3/28/2008  
 Notice of Appeal Filed: 3/28/2008  
 Court Reporter: Eva Oemick

COA Status: ☐ Granted in full/part (appeal only) ☐ Denied (send clerk's file)

### Docket Fee Notification

Docket Fee: ☐ Paid ☐ Not Paid ☒ No Fee Required  
 USA/GOVT. APPEAL: ☐ Yes ☒ No

Date F/P granted (Show Date and Attach Copy of Order): \_\_\_\_\_

Was F/P Status Revoked? ☐ Yes ☐ No

Companion Case(s): (Please list consolidated cases, if applicable) \_\_\_\_\_

### Counsel Information

#### Appellant Counsel:

David M C Peterson  
 Federal Defenders of San Diego  
 225 Broadway  
 Suite 900  
 San Diego, CA 92101-5030  
 (619) 234-8467

#### Appellee Counsel:

US Attorney  
 US Attorneys Office, Southern District of CA  
 880 Front Street  
 Room 6293  
 San Diego, CA 92101  
 (619) 557-5610

Counsel Status: ☐ Retained ☒ Appointed ☐ Pro Se

Appointed by: Jan M. Adler  
 (Attach copy of order/minutes)

### Defendant Information

Prisoner ID Number: 06543298

Bail: \_\_\_\_\_  
 Custody: \_\_\_\_\_ X \_\_\_\_\_

### SERVICE LIST

**Counsel for Appellant(s) and Appellee(s), as listed on the previous page, have been sent copies of the following items:**

x	Transmittal of U.S.C.A. (Appellant and Appellee)
x	Case Information/Docketing Fee Notification Form. (Appellant Only)
x	Notice of Appeal. (Appellant, Appellee, U.S. District Judge, USPO, and Court Reporter)
x	Docket Entries (Appellant and Appellee)
x	Designation of Reporter's Transcript and Ordering Form. (Appellant Only, mailed separately)
x	Order for Time Schedule. (Criminal Only) (Appellant, Appellee, and Court Reporter)
	Magistrate Judge's Report and Recommendation
	COA Order
	F/P Order
	Minute Order
x	Other: Judgment entered 3/28/2008, NEF Sentencing Minutes entered 3/25/2008, NEF Minutes Appointing Counsel entered 1/23/2008, Notice of Attorney Appearance entered 1/29/2008

Form Completed And Documents Served By U.S. District Court Deputy Clerk:

**L. Hammer**

Lauren Hammer \_\_\_\_\_

Deputy's Name

Deputy's Signature

**UNITED STATES DISTRICT COURT**

Southern District Of California  
 Office Of The Clerk  
 880 Front Street, Room 4290  
 San Diego, California 92101-8900  
 Phone: (619) 557-5600  
 Fax: (619) 702-9900

W. Samuel Hamrick, Jr.  
 Clerk of Court

To: Clerk, U.S. Court of Appeals  
 P.O. Box 193939  
 San Francisco, CA 94119-3939

Re: **USCA No:**  
**USDC No: 08cr416 LAB**  
**USA v. Esparza-Gutierrez**

Clerk, U.S. Court of Appeals, enclosed herewith you will please find:

x	Copy of the Notice of Appeal	x	Docket Entries
x	Case Information/Docket Fee Payment Notification Form		
x	Order for Time Schedule (Criminal)		
	Original Clerk's Record in	set(s) of	volume(s).
	Reporter's transcript's transcripts in	set(s) of	volume(s).
	Exhibits in	envelope(s)	box(es) folders(s)
x	Judgement Order		F/P Order
	CJA Form 20		Minute Order
	Certificate of Record		Mandate Return
	Magistrate Judge's Report and Recommendation		
	COA Order		
	Amended docket fee notification form		
	Order Appointing Counsel for Appeal		
x	NEF Minutes entered 3/25/2008, NEF Minutes entered 1/23/2008, Notice entered 1/29/2008		
x	Please acknowledge on the enclosed copy of this transmittal		

Sincerely yours,

W. Samuel Hamrick, Jr.  
 Clerk of Court

**L. Hammer**

By: \_\_\_\_\_  
 Lauren Hammer, Deputy

Date: 04/1/08